

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In Re:)	Docket No. RCRA-III-264
)	
Bil-Dry Corporation)	Complaint, Compliance
5525 Grays Avenue)	Order and Notice of
Philadelphia, PA 19143)	Opportunity for Hearing
)	
RESPONDENT)	

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Complainant is the Associate Director, Office of RCRA Programs, Hazardous Waste Management Division, United States Environmental Protection Agency, Region III ("EPA"). Respondent is Bil-Dry Corporation located in Philadelphia, Pennsylvania ("Respondent").

Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. Sections 6921-6939e and the regulations thereunder at 40 C.F.R. Parts 260-271 and regulations of the Commonwealth of Pennsylvania ("Pennsylvania") hazardous waste management program. Section 3008(a) of RCRA authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. Section 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirements of Subtitle C of RCRA.

On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. Section 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Pennsylvania ("Pennsylvania") was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. Sections 6921 - 6939e. The provisions of the Pennsylvania hazardous waste management program, through this final authorization, have become requirements of RCRA Subtitle C and are accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a).

bil-dry.01b 9/30/96

I hereby certify that the
within is a true and correct copy
of the original Complaint
filed in this matter.

Attorney for

Pennsylvania has not been granted authorization to administer its hazardous waste management program in lieu of certain provisions of the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. These provisions are enforceable in Pennsylvania exclusively by EPA. On February 10, 1990 Pennsylvania's recodification of its hazardous waste management program became effective. To the extent that factual allegations or legal conclusions set forth in the Complaint are based on provisions of Pennsylvania's authorized hazardous waste management program, the current codifications of the relevant provisions are cited as authority for such allegations or conclusions with a parallel citation to the former codification. The factual allegations or legal conclusions based solely on provisions of the Federal hazardous waste management program, added or amended by HSWA, will cite those Federal provisions as authority for such allegations or conclusions.

EPA has given Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), prior notice of the issuance of this Complaint in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).

II. COMPLAINT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent, Bil-Dry Corporation, is a "person" as defined in 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
2. Respondent owns and operates a facility located at 5525 Grays Avenue, Philadelphia Pennsylvania ("the Facility").
3. Upon information and belief, since about 1985 or 1986, Respondent has manufactured and packaged grout and cement patching products at the Facility.
4. Respondent is a "generator" as that term is defined in 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
5. Respondent is a "owner" or "operator" of the Facility as those terms are defined in 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
6. The Facility does not have a permit or interim status under Section 3005 of RCRA, 42 U.S.C. Section 6925 or 25 Pa. Code Chapter 270 (25 Pa. Code Section 75.270 et seq.).

7. On December 11, 1995, EPA conducted a RCRA Underground Storage Tanks ("UST") Sampling Inspection of the Facility.
8. On April 1, 1996, the Pennsylvania Department of Environmental Protection ("PADEP") conducted an inspection of the Facility, leading to the issuance of a Notice of Violation ("NOV") to the Facility on May 30, 1996.
9. On April 9 and 10, 1996, EPA conducted a RCRA Sampling Inspection and RCRA UST Sampling Inspection of the Facility.

COUNT I

10. The allegations of Paragraphs 1 through 9 of the Complaint are hereby incorporated by reference as though fully set forth herein.
11. 25 Pa. Code Section 270.1(a) (25 Pa. Code Section 75.270(a)), provides that a person or municipality may not own or operate a hazardous waste storage, treatment, or disposal facility unless the person or municipality has first obtained a permit for the facility from PADEP, or as otherwise provided by 25 Pa. Code Section 265.431(d) (25 Pa. Code Section 75.265(z)(5)) (relating to interim status standards for the hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).
12. At the time of the inspections conducted by PADEP and EPA, there were between 25 and 130 drums, and at least 4 tanks present in an unenclosed area of the Facility.
13. At the time of the inspections conducted by PADEP and EPA, the contents of the drums and tanks referred to in paragraph 12 of this Complaint were in "storage," or had been disposed of at a "disposal facility," as those terms are defined at 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
14. During EPA's inspection of the Facility on April 9 and 10, 1996, EPA inspectors obtained 11 samples of the contents of 7 of the drums and the 4 tanks referred to in paragraph 13 of this Complaint, and performed a Toxicity Characteristic Leaching Procedure ("TCLP") on each of the 11 samples, as described at 40 C.F.R. Section 261.24(a).
15. According to the analytical results of the sampling referred to in paragraph 14 of this Complaint, the contents of one drum exhibited the characteristic of corrosivity (D002); the contents of one drum exhibited the characteristic of corrosivity (D002) and the characteristic of toxicity for chromium (D007); the contents of one drum exhibited the characteristic of ignitability (D001) and toxicity for 2-Butanone (also known as Methyl Ethyl Ketone ("MEK") (D035)); the contents of one drum exhibited the characteristic of ignitability (D001); the contents of one tank exhibited the

characteristic of ignitability (D001); and the contents of two tanks exhibited the characteristic of toxicity for MEK (D035).

16. The contents of the drums and tanks referred to in paragraph 12 of this Complaint are "solid waste," as that term is defined at 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
17. The contents of the drums and tanks referred to in paragraph 15 of this Complaint are "hazardous waste," as that term is defined at 25 Pa. Code Section 260.2 (25 Pa. Code Section 75.260(a)).
18. 25 Pa. Code Section 262.34(a) (25 Pa. Code Section 75.262(g)), allows a generator to accumulate hazardous waste on-site without a permit for 90 days or less, provided that, inter alia:
 - (a) that waste is placed in containers that are managed in accordance with 25 Pa. Code Chapter 265 Subchapter I (25 Pa. Code Section 75.265(q)); and
 - (b) the date on which any waste was placed in the container is clearly marked and visible for inspection.
 - (c) the drums are packaged, marked, or labeled in accordance with 25 Pa. Code Section 262.30 (25 Pa. Code Section 75.262(f)).
19. Upon information and belief, the contents of the drums and tanks referred to in paragraph 15 of this Complaint, have been accumulated at the Facility since 1985 or 1986, i.e., for greater than 90 days.
20. At the times of the inspections by PADEP and EPA, the hazardous wastes in the drums referred to in paragraph 15 of this Complaint were not being managed in accordance with the provisions of 25 Pa. Code Section 262.34 (25 Pa. Code Section 75.262(g)). Specifically:
 - (a) the drums were not in good condition, at least one drum was not kept closed during storage except when necessary to add or remove waste, the drums were stored in a manner that may rupture the drums or cause them to leak, and thus were not managed in accordance with 25 Pa. Code Chapter 265 Subchapter I (25 Pa. Code Section 75.265(q));
 - (b) the date on which any waste was placed in the drums was not clearly marked and visible for inspection;

- (c) the drums were not packaged, marked, or labeled in accordance with 25 Pa. Code Section 262.30 (25 Pa. Code Section 75.262(f)).
21. Respondent failed to qualify for the 90 day accumulation generator exemption of 25 Pa. Code Section 262.34(a) (25 Pa. Code Section 75.262(g)), and is an owner or operator of a hazardous waste storage facility subject to the requirements of 25 Pa. Code Chapters 264 and 265 (25 Pa. Code Chapters 75.264 and 75.265) and the permit requirements at 25 Pa. Code Chapter 270 (25 Pa. Code Chapter 75.270).
22. Respondent has violated 25 Pa. Code Section 270.1 (25 Pa. Code Chapter 75.270(a)) by accumulating hazardous waste on-site without a permit or without having interim status and by failing to meet each of the conditions for generator accumulation set forth in 25 Pa. Code Section 262.34(a) (25 Pa. Code Section 75.262(g)).

COUNT II

23. The allegations of Paragraphs 1 through 22 of the Complaint are hereby incorporated by reference as though fully set forth herein.
24. 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)) requires, inter alia, that a person who generates a solid waste shall make a determination using the procedures set forth at 25 Pa. Code Sections 262.11(a)(1) - 262.11(e) (25 Pa. Code Section 75.262(b)(1) - (5)), as to whether or not that solid waste is a hazardous waste.
25. Respondent is the "generator" of the solid and hazardous waste contained in the drums and tanks referred to in paragraph 12 of this Complaint.
26. Upon information and belief, Respondent did not perform the hazardous waste determinations required by 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)), on the solid waste contained in the drums and tanks referred to in paragraph 12 of this Complaint.
27. Respondent has violated 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)) by failing to perform hazardous waste determinations required by 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)) on the solid waste contained in the drums and tanks referred to in paragraph 12 of this Complaint.

COUNT III

28. The allegations of Paragraphs 1 through 27 of the Complaint are incorporated herein by reference as though fully set forth herein.

29. 40 C.F.R. Section 268.7(a) requires, inter alia, that a generator must test his waste, or test an extract, using test method 1311 (the Toxicity Characteristic Leaching Procedure), or use knowledge of the waste, to determine if the waste is restricted from land disposal under 40 C.F.R. Section 268.
30. Upon information and belief, at no time has Respondent determined pursuant to 40 C.F.R. Section 268.7(a) if the wastes contained in the drums and tanks referred to in paragraph 15 of this Complaint are restricted from land disposal.
31. Respondent has violated 40 C.F.R. Section 268.7(a) by failing to determine if the wastes contained in the contained in the drums and tanks referred to in paragraph 15 of this Complaint are restricted from land disposal.

COUNT IV

32. The allegations of Paragraphs 1 through 31 of the Complaint are incorporated herein by reference as though fully set forth herein.
33. 40 C.F.R. Section 268.50(a) provides, inter alia,:

Except as provided in this section, the storage of hazardous wastes restricted from land disposal . . . is prohibited, unless the following conditions are met:

(1) A generator stores such wastes in tanks, containers or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in §262.34 and parts 264 and 265 of this chapter.

(2) An owner/operator of a hazardous waste treatment, storage or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment or disposal and:

(i) Each container is clearly marked to identify its contents and the date each period of accumulation begins;

(ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility.

34. Respondent stored land disposal restricted waste in the drums and tanks referred to in paragraph 15 of this Complaint, for purposes other than the accumulation of such quantities of hazardous waste as necessary to facilitate proper treatment or disposal.
35. Respondent stored restricted waste in the drums and tanks referred to in paragraph 15 of this Complaint without complying with the requirements of 40 C.F.R. Section 262.34, as required by 40 C.F.R. Section 268.50(a)(1). Specifically:
- (a) the date on which each period of accumulation began was not clearly marked and visible on each drum, in violation of 40 C.F.R. Section 262.34(a)(2);
 - (b) each drum and tank was not labeled or marked clearly with the words "Hazardous Waste;"
 - (c) the drums were not managed in accordance with 40 C.F.R. Part 265, Subpart I (as described in paragraph 36 of this Complaint); and
 - (d) the tanks were not managed in accordance with 40 C.F.R. Part 265, Subpart J (as described in paragraph 37 of this Complaint).
36. Respondent failed to comply with the requirements of subpart I of 40 C.F.R. Chapter 265 with respect to the land disposal restricted wastes stored in the drums referred to in paragraph 15 of this Complaint, as required by 40 C.F.R. Section 268.50(a). Specifically, Respondent:
- (a) did not transfer the contents of any containers that were not in good condition to a container in good condition or manage the waste in some other way that complies with the requirements of 40 C.F.R. Part 265, as required by 40 C.F.R. Section 265.171;
 - (b) handled or stored containers holding hazardous waste in a manner which may rupture the container or cause it to leak, which is prohibited by 40 C.F.R. Section 265.173; and
 - (c) stored at least one drum that was not kept closed during storage except when necessary to add or remove waste.
37. Respondent failed to comply with the requirements of subpart J of 40 C.F.R. Chapter 265 with respect to the land disposal restricted wastes stored in the tanks referred to in paragraph 15 of this Complaint, as required by 40 C.F.R. Section 268.50(a). Specifically, Respondent:

(a) stored land disposal restricted ("LDR") wastes in tanks at the Facility without secondary containment that meets the requirements of 40 C.F.R. Section 265.193; and

(b) did not remove or decontaminate all waste residues from the tanks upon closure of the tank system at the Facility, as is required by 40 C.F.R. Section 265.197.

38. Respondent failed to comply with the requirements of 40 C.F.R. Section 268.50(a)(2). Specifically, Respondent:

(a) did not clearly mark each drum to identify its contents and the date each period of accumulation began; and

(b) did not clearly mark each tank with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation began, or record and maintain such information for each tank in the operating record at the Facility.

39. Respondent has violated 40 C.F.R. 268.50(a) by storing hazardous wastes restricted from land disposal for purposes other than the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment or disposal and without meeting the conditions set forth at 40 C.F.R. Sections 268.50(a)(1) and (2), 40 C.F.R. Sections 262.34(a)(1)(i) and (a)(1)(ii), 40 C.F.R. Section 265.171, 40 C.F.R. Section 265.173, 40 C.F.R. Section 265.193 and 40 C.F.R. Section 265.197.

COUNT V

40. The allegations of Paragraphs 1 through 39 of the Complaint are incorporated herein by reference as though fully set forth herein.

41. 25 Pa. Code Section 265.15(b) (25 Pa. Code Section 75.265(e)(2)) requires that the owner or operator of a facility "develop a written schedule of inspections of all monitoring equipment, safety and emergency equipment, security devices and operating and structural equipment that are important to preventing, detecting, or responding to environmental or human health hazards," and that the schedule "be retained at the facility."

42. Upon information and belief, at the time of the inspections referred to in paragraphs 7 through 9 of this Complaint, Respondent had not developed or retained at the Facility a written schedule of inspections as required by 25 Pa. Code Section 265.15(b) (25 Pa. Code Section 75.265(e)(2)).

43. Respondent violated 25 Pa. Code Section 265.15 (25 Pa. Code Section 75.265(d)), by failing to develop or retain at the Facility a written schedule of inspections.

COUNT VI

44. The allegations of Paragraphs 1 through 43 of the Complaint are incorporated herein by reference as though fully set forth herein.
45. 25 Pa. Code Section 265.112(a) (25 Pa. Code Section 75.265(o)(3)) requires, inter alia, that the owner or operator have a written closure plan that includes at least the information set forth at 25 Pa. Code Sections 265.112(a)(1) - (a)(5) (25 Pa. Code Section 75.265(o)(3)(i) - (iv)).
46. Upon information and belief, Respondent does not have a written closure plan for the Facility as required by 25 Pa. Code Section 265.112 (25 Pa. Code Section 75.265(o)(2)).
47. Respondent has violated 25 Pa. Code Section 265.112 (25 Pa. Code Section 75.265(o)(2)) by failing to have a written closure plan for the Facility.

COUNT VII

48. The allegations of Paragraphs 1 through 47 of the Complaint are incorporated herein by reference as though fully set forth herein.
49. 25 Pa. Code Section 265.142(a) (25 Pa. Code Section 75.265(p)(2)) requires the owner or operator of a hazardous waste management facility to have and keep at the facility, a written estimate of the cost of closing the facility.
50. 25 Pa. Code Section 265.142(b) (25 Pa. Code Section 75.265(p)(3)), requires the owner or operator to prepare a new cost estimate whenever a change in the closure plan affects the cost of closure.
51. 25 Pa. Code Section 265.142 (c) (25 Pa. Code Section 75.265(p)(4)), requires that a the closure cost estimate must be adjusted by application of an inflation factor on the anniversary of the effective date of the Pennsylvania hazardous waste facility closure cost regulations.
52. Upon information and belief, Respondent does not have a written cost estimate for closure for the Facility as required by 25 Pa. Code Section 265.142 (25 Pa. Code Section 75.265(p)(2)), and/or has not adjusted any such closure plan as required by 25 Pa. Code Section 265.142(b) and/or (c) (25 Pa. Code 75.265(p)(3) and/or (4)).

53. Respondent has violated 25 Pa. Code Sections 265.142(a), (b) and/or (c) (25 Pa. Code 75.265(p)(2),(3) and/or (4)), by failing to have and update a written closure cost estimate for the Facility and/or by failing to adjust its closure cost estimate in accordance with the Pennsylvania hazardous waste facility closure cost regulations.

COUNT VIII

54. The allegations of Paragraphs 1 through 53 of the Complaint are incorporated herein by reference as though fully set forth herein.
55. 25 Pa. Code Section 265.171 (25 Pa. Code Section 75.265(q)(1)) provides that "[i]f a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from the defective container to a container that is in good condition or manage the waste in some way that complies" with PADEP's container management regulations.
56. 25 Pa. Code Section 265.173(a) (25 Pa. Code Section 75.265(q)(3)) provides, inter alia, that "[a] container holding hazardous waste shall be kept closed during storage, except when it is necessary to add or remove waste."
57. 25 Pa. Code Section 265.178 (25 Pa. Code Section 75.265(q)(10)) provides that container storage areas shall have a containment system capable of collecting and holding spills, leaks, and precipitation, and that the containment system shall, inter alia, have an impervious base, provide efficient drainage from the base to a sump or collection system, and have sufficient capacity to contain the greater of the highest volume of the largest container or 10% of the volume of all of the containers.
58. During the April 1, 1996 PADEP inspection and the December 11, 1995 and April 9 and 10, 1996 EPA inspections of the Facility, the drums referred to in paragraph 15 of this Complaint that were stored and/or disposed at the Facility were rusted or otherwise in poor condition.
59. During the April 9 - 10, 1996 EPA inspection, one of the drums that tested positive for the characteristic of ignitability (D001), was not closed during storage although no waste was being added to or removed from the drum.
60. During the April 1, 1996 PADEP inspection and the December 11, 1995 and April 9 and 10, 1996 EPA inspections of the Facility, the container storage area did not have a containment system capable of collecting and holding spills, leaks, and precipitation, having an impervious base, and providing efficient drainage from the base to a sump or collection system, and sufficient capacity to contain the greater of the highest volume of the largest container or 10% of the volume of all of the containers.

61. Respondent violated 25 Pa. Code Section 265.171 (25 Pa. Code Section 75.265(q)(1)), 25 Pa. Code Section 265.173(a) (25 Pa. Code Section 75.265(q)(3)), and 25 Pa. Code Section 265.178 (25 Pa. Code Section 75.265(q)(10)) by failing to transfer the hazardous waste from the defective containers at the Facility to a containers in good condition or by otherwise managing the waste in a compliant manner, by storing open a drum containing a characteristic hazardous waste although no waste was being added to or removed from the drum, and by failing to have a containment system capable of collecting and holding spills, leaks, and precipitation and otherwise meeting the specifications of 25 Pa. Code Section 265.178 (25 Pa. Code Section 75.265(q)(10)).

COUNT IX

62. The allegations of Paragraphs 1 through 61 of the Complaint are incorporated herein by reference as though fully set forth herein.
63. 25 Pa. Code Section 267.11 (25 Pa. Code Section 75.311), requires that all "[H]azardous waste storage, treatment or disposal facilities that have been permitted . . . or which are being treated as having been issued a permit . . . shall file a bond" payable to PADEP.
64. As of the date of issuance of this Complaint, Respondent had not filed with PADEP a bond payable to PADEP.
65. Respondent has violated 25 Pa. Code Section 267.11 (25 Pa. Code Section 75.311), by failing to file a bond payable to PADEP.

II. COMPLIANCE ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a), Respondent is hereby ordered to:

1. Immediately after receipt of this Complaint cease storing hazardous waste at the Facility unless and until such time as Respondent has obtained a permit pursuant to 25 Pa. Code Section 270.1(a) (25 Pa. Code Section 75.270(a)) for the storage of hazardous waste or is in compliance with each of the conditions for generator accumulation set forth in 25 Pa. Code Section 262.34 (25 Pa. Code Section 262(g)).
2. Within fifteen (15) days after receipt of this Complaint, conduct hazardous waste determinations in accordance with 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)), of the solid waste contained in drums stored at the Facility.

3. Immediately after receipt of the hazardous waste determinations required by paragraph 2 of this Compliance Order, conduct determinations on all hazardous wastes identified at the Facility to determine if those wastes are land disposal restricted, in accordance with 40 C.F.R. Section 268.7(a), and manage all land disposal restricted wastes in accordance with the requirements of 40 C.F.R. Part 268.
4. Immediately after receipt of this Complaint cease storing land disposal restricted wastes at the Facility except in accordance with the requirements of 40 C.F.R. Section 268.50.
5. Within seven (7) calendar days after receipt of this Complaint, comply with 25 Pa. Code Section 262.12 (25 Pa. Code Section 265.262(c)) which requires the Facility to obtain a hazardous waste identification number.
6. Within thirty (30) calendar days after receipt of this Complaint, submit to PADEP for approval, and to EPA, a closure plan, including a schedule for expeditious implementation thereof, for the hazardous waste drum and tank storage area at the Facility, which complies with the requirements of 25 Pa. Code Section 265.112 (25 Pa. Code Section 75.265(o)(2), and upon receipt of the approved closure plan from PADEP, implement the closure plan in accordance with the terms thereof.
7. Within forty-five (45) days after receipt of this Complaint, establish financial assurance for closure of the Facility in accordance with 25 Pa. Code Chapter 267 (25 Pa. Code 75.301 et seq.).
8. Within sixty (60) days after receipt of this Complaint, submit to EPA a written report and signed certification by a "responsible corporate official" as that term is defined at 40 C.F.R. 270.11(a), stating whether or not the Respondent has complied with the activities set forth in this Compliance Order above, and describing with particularity each and every step taken to correct the violations referred to in the Complaint. The certification must contain the language specified in 40 C.F.R. Section 270.11(d).

Any notifications or submissions to EPA required by this Compliance order shall be sent to the attention of Ms. Zelma Maldonado (3HW10), United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107.

IV. CIVIL PENALTY ASSESSMENT

The proposed civil penalty has been determined in accordance with Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. Sections 6928(a)(3) and (g). For purposes of determining the amount of any penalty to be assessed, Sections 3008(a) and (g), 42 U.S.C. Sections 6928(a)(3) and (g), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular

facts and circumstances of this case with specific reference to EPA's October 1990 RCRA "Civil Penalty Policy" ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Exhibit "A"). This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

Pursuant to Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. Sections 6928(a)(3) and (g), EPA proposes the assessment of civil penalties against the Respondent in the following amounts for the following violations:

COUNT I

Respondent is an owner and operator of a hazardous waste storage facility for which a permit or interim status is required under 25 Pa Code Section 270.1(a) (25 Pa Code Section 75.270(a)). Respondent's failure to comply with the requirements of this section constitutes a significant harm to the integrity of the RCRA program. Based on EPA's evidence, Respondent's failure to comply with this section constitutes a moderate extent of deviation. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty of \$250 per day for a total of \$30,000.

Total Count I Penalty: \$36,000

COUNT II

Respondent violated 25 Pa. Code Section 262.11 (25 Pa. Code Section 75.262(b)), by failing to determine that its ignitable (D001), corrosive (D002), chromium (D007) and MEK (D035) wastes, were hazardous wastes. Respondent's failure to determine that the wastes it generated were hazardous wastes constitutes a significant harm to the integrity of the RCRA regulatory program and to the environment. It is the fundamental intent of the RCRA regulations to provide protection of human health and the environment by requiring facilities to properly manage their hazardous wastes from cradle-to-grave. This starts with proper characterization of each solid waste generated. Based on EPA's evidence, the Respondent's failure to determine that the wastes it generated were hazardous waste constitutes a moderate deviation from the regulatory requirements. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10,

1996 (120 Days). The foregoing supports a multi-day penalty of \$250 per day for a total of \$30,000.

Total Count II Penalty: \$36,000

COUNT III

Respondent violated 40 C.F.R. Section 268.7(a) by failing to determine that its chromium and MEK wastes were restricted from land disposal. Respondent's failure to determine that these wastes were restricted from land disposal constitutes a significant harm to the RCRA land disposal restriction program, which depends for its effectiveness on proper characterization. Respondent's failure to determine that these wastes were restricted from land disposal also constitutes a significant harm to the environment, from the risk of improper management due to lack of proper characterization. Given the amount of hazardous wastes known to be present at the Facility, however, the Respondent's failure to determine that the wastes were restricted from land disposal constitutes a moderate deviation from the RCRA requirements. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty \$250 per day for a total of \$30,000.

Total Count III Penalty: \$36,000

COUNT IV

Respondent's failure to properly store land disposal restricted waste as required by 40 C.F.R. Section 268.50, could have posed a significant risk to human health and the environment, and constitutes a significant harm to the integrity of the RCRA program. It is the intent of the RCRA regulations to provide maximum protection of human health and the environment by requiring facilities to properly manage their hazardous wastes from cradle-to-grave. Compliance with the LDR program is required to ensure that restricted hazardous wastes are properly stored prior to disposal. Based on EPA's evidence, Respondent's failure to properly store LDR wastes constitutes a moderate deviation from the regulations. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty of \$250 per day for a total of \$30,000.

Total Count IV Penalty: \$ 36,000

COUNT V

Respondent's failure to comply with 25 Pa. Code Section 262.15 (b) (25 Pa. Code Section 75.265(e)(2)), constitutes a significant harm to the RCRA regulatory program and

human health the environment because failure to have a schedule for inspections creates a risk that inspection will not be conducted as needed, thereby increasing the potential for harm to human health and the environment. However, inspections alone are not sufficient to protect human health and the environment. If wastes are not being properly managed in the first instance, failure to perform an inspection adds incrementally to the risk of harm already present at a facility storing the amount of waste known to be present at the Facility. Therefore, failure to comply with this requirement constitutes a minor harm to human health and the environment. Based on EPA's evidence, failure to comply with this section constitutes a moderate deviation from the regulatory requirements. The foregoing supports a gravity-based penalty of \$1,000

Total Count V Penalty: \$ 1,000

COUNT VI

Respondent violated 25 Pa. Code Section 265.112 (25 Pa. Code Section 75.265(o)(3)) by not having a closure plan for the facility. The Respondent's failure to comply with this section constitutes a significant harm to human health and/or the environment because lack of a closure plan may delay propose closure of a facility. It also harms the RCRA program which is designed to require planning and preparation for hazardous waste management activities, including closure. Therefore, based on EPA's evidence, Respondent's failure to provide a closure plan in this case constitutes a significant deviation from the regulatory requirements. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty of \$250 per day for a total of \$30,000.

Total Count VI Penalty: \$ 36,000

COUNT VII

Respondent violated 25 Pa. Code Section 265.142 (25 Pa. Code Section 75.265(p)(2)) by failing to have a written cost estimate for closing the facility and/or by failing to update or adjust its cost estimate. The Respondent's failure to comply with the procedures set forth in the regulations constitutes a minor harm to the integrity of the RCRA regulatory program because it incrementally contributes to the harm caused by Respondent's failure to develop a closure plan in the first instance. These regulations are intended to ensure that the owner and operator of a hazardous waste facility is aware of the funds needed to ensure proper closure of the facility. This serves the program goal of advance planning and preparation for hazardous waste activities. The Respondent's failure to have written cost estimate in this case, is a moderate deviation from the regulatory requirements. The foregoing supports a gravity-based penalty of \$1,400.

Total Count VII Penalty: \$1,400

COUNT VIII

Respondent violated 25 Pa Code Sections 265.171, 265.173 and 265.178 (25 Pa Code Sections 75.265(q)(1), 75.265(q)(3) and 75.265(q)(10)) by storing hazardous waste in containers in poor conditions, by storing at least one container of hazardous waste that was not covered with a lid when it was not necessary to add or remove hazardous waste, and by storing hazardous wastes in containers which were kept in a storage containment area without a containment system capable of collecting and holding spills, leaks and precipitation. Respondent's failure to properly store hazardous waste could have posed a substantial risk to human health and the environment, and constitutes a substantial harm to the integrity of the RCRA program, moderated only by the relatively small number of drums and tanks known to contain hazardous waste at the Facility. It is the intent of the RCRA regulations to provide maximum protection of human health and the environment by requiring facilities to properly manage their hazardous wastes from cradle-to-grave. Respondent's failure to properly store hazardous wastes in the amount known to have been stored, constitutes a significant deviation from the regulations. The foregoing supports a gravity-based penalty of \$6,000. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty of \$250 per day for a total of \$30,000.

Total Count VIII Penalty: \$ 36,000

COUNT IX

Respondent violated 25 Pa. Code Section 267.11 (25 Pa. Code Section 75.311) by failing to file a bond payable PADEP. The Respondent's failure to comply with the procedures set forth in the regulations, constitutes a minor harm to the integrity of the RCRA regulatory program in this case. These regulations are intended to prevent the creation of Superfund sites. The Respondent's failure to file a bond for a facility storing the amount of waste known to be present at the Facility, constitutes a moderate deviation from the regulatory requirements. The foregoing supports a gravity-based penalty of \$1,400. EPA determined that enough information is available to support a multi-day component for this violation based on the period of December 11, 1995 through April 10, 1996 (120 Days). The foregoing supports a multi-day penalty of \$100 per day for a total of \$12,000.

Total Count IX Penalty: \$13,400

TOTAL PROPOSED PENALTY: \$231,800

Any violation of this Compliance Order or further violation of RCRA Subtitle C may subject Respondent to further administrative, civil, and/or criminal enforcement action, including the imposition of civil penalties and criminal fines and/or imprisonment, as provided in Section 3008 of RCRA, 42 U.S.C. Section 6928.

Payment of the penalty shall be made by sending a cashier's check, payable to the United States of America to:

Regional Hearing Clerk
EPA Region III
P.O. Box 360515
Pittsburgh, Pennsylvania 15251-6515

Copies of the transmittal letter shall be simultaneously sent to:

Associate Director
Hazardous Waste Management Division
Office of RCRA Programs (3HW03)
EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

and to:

Regional Hearing Clerk (3RC00)
EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint, Compliance Order, and Notice of Opportunity for Hearing the appropriateness of the assessed penalty or the terms of the Compliance Order. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, within thirty (30) days of receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which the Respondent has any knowledge. The Answer must contain: (1) a statement of the facts which constitute the grounds of defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) a request for a hearing, if Respondent desires a hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein and ordering compliance with the terms of the Compliance Order without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to 40 C.F.R. Section 22.21(d). The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. Sections 551-559, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of these rules is enclosed.

SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, the amount of the proposed civil penalty and the terms of the Compliance Order. A request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, discretion or the amount of any penalties agreed to in the Consent Agreement.

The project manager assigned to this case is Ms. Zelma Maldonado. If you have any questions concerning the technical aspects of this case, please contact Ms. Maldonado at (215) 596-3448.

The staff attorney assigned to this case is Mr. Neil Bigioni. If you have any questions or wish to arrange a settlement conference, please contact Mr. Bigioni at (215) 566-2781 prior to the expiration of the thirty (30) day period following receipt of the Complaint. Once again, however, such a request for a settlement conference does not relieve you of your responsibility to file an Answer within thirty (30) days following your receipt of this Complaint.

CERTIFICATE OF SERVICE

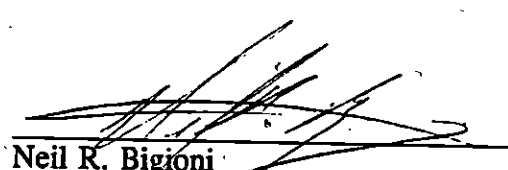
I hereby certify that the original of the foregoing Complaint, Compliance Order and Notice of Hearing was hand-delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region III on September 30, 1996, and that a true and correct copy copied will be mailed to each of the following by United States certified mail/return receipt requested:

Mr. Bill Rodgers, President
Bil-Dry Corporation
3505 West Grand River Avenue
Howell, MI 48843

Glenn R. Matecun, General Counsel
Bil-Dry Corporation
3505 West Grand River Avenue
Howell, MI 48843

Joseph Mazza
General Manager
Bil-Dry Corporation
5525 Grays Avenue
Philadelphia, PA 19142

Date: 9/30/96


Neil R. Bigioni
Assistant Regional Counsel
(215) 566-2781

Please be advised that the Consolidated Rules of Practice prohibit any ex parte discussion of the merits of a case with, among others, the Administrator, Presiding Officer, Regional Administrator or Regional Judicial Officer members of the Environmental Appeals Board, after the complaint has been issued (40 C.F.R. § 22.08).

Date:

9/30/96

A handwritten signature in cursive script, reading "Maria Parisi Vickers".

Maria Parisi Vickers, Associate Director
Hazardous Waste Management Division
Office of RCRA Programs